

REMARKS

The non-final Office Action of April 21, 2010, rejects all pending claims 1-2, 5-9, 11-13, and 15-16. In this Amendment in Reply, Applicants amend independent claim 8 and add new dependent claims 17-21. Support for this amendment can be found throughout the specification as originally filed, for example, at page 13, lines 3-17. Applicants respectfully request reconsideration of all pending claims in view of the remarks below.

Procedural Posture

Prosecution of this application was reopened in response to a Notice of Appeal and an Appeal Brief filed by Applicants. In particular, the Office concedes U.S. Publication No. 2005/0065832 to Virta (“the Virta reference”) does not disclose all of the recited elements of independent claims 1 and 8. *See* Office Action at p. 2.

Pursuant MPEP 1207.04, Applicants understand that, since prosecution of this matter was reopened from an appeal before a decision on the merits by the Board of Patent Appeals and Interferences, the fees paid for the Notice of Appeal and the Appeal Brief can be applied to a later appeal even though Applicants are currently electing to continue prosecution.

Claim Rejections – 35 U.S.C. § 101

Claims 8-9, 11-13, and 15-16 stand rejected under 35 U.S.C. § 101 as being allegedly directed to non-statutory subject matter with regard to “information carrier” possibly encompassing a propagated signal. These rejections are rendered moot by the amendment to independent claim 8. Accordingly, Applicants respectfully request these rejections be withdrawn.

Claim Rejections – 35 U.S.C. §§ 102 and 103

Claims 1-2, 5-8, 13, and 15-16 stand rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by U.S. Patent No. 5,408,663 to Miller (“the Miller reference”). Claims 9, 11, and 12 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over the Miller reference

in view of U.S. Publication No. 2005/0065832 to Virta ("the Virta reference"). Claims 1 and 8 are independent.

Applicants' independent claims are patentable over the cited references because the cited references, whether taken alone or in combination, do not disclose or suggest, at least, that "scheduling ... a remaining portion of the requested amount of time within the requested time period *except within the specific time slot*, ... causes the availability of the resource for a remaining portion of the requested time period to be greater than zero percent and less than one hundred percent," as provided in claims 1 and 8 (emphasis added).

Applicants' claimed subject matter relates generally to scheduling and refining a non-concrete request for a resource, where the non-concrete request "includes a date range and the estimated amount of time needed from the resource, but does not include concrete date and time facts." (Spec. 2:8-10). FIGS. 2B-C

(reproduced at right) provide an illustrative example of scheduling a non-concrete request for a resource for sixteen hours within a three day period and then refining eight hours of the non-concrete request based on a subsequently received concrete request. Particularly, a "resource planning application [] receives a non-concrete request for sixteen hours of service from the resource sometime on the

dates of June 10-12 [and] . . . evenly distributes the non-concrete request into portions 231, 232, and 233 over the three-day period 200." (Spec. 6:30-7:11). The resource planning application receives a "refinement [which] is a concrete request that specifies the resource must serve eight hours (out of the originally requested sixteen hours) on June 11 during the time slot of 8:00 AM to 4:00 PM." (Spec. 7:24-25). Based upon the refinement, "the concrete portion 240 is

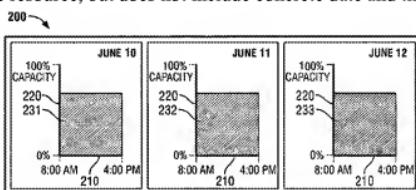


FIG. 2B

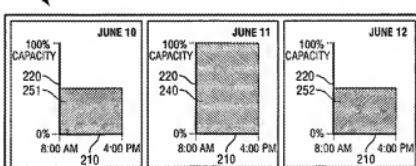


FIG. 2C

scheduled in the electronic schedule according to the time slots specified in the concrete request (8:00 AM to 4:00 PM)," (spec. 7:31-8:2), and "the remaining eight hours [are redistributed] into portions 251 and 252 using the modified availability information." (Spec. 8:16-17). Notice that the availability of the resource for June 10 and 12 has increased from 33% (operating at 66% capacity in 231 and 233) to 50% (operating at 50% capacity in 251 and 252) with the concrete refinement of the non-concrete request.

Applicants' claims bear out aspects of the example refinement features above with regard to FIGS. 2B-C. For example, claim 1 recites "scheduling by the computer system in the electronic schedule a remaining portion of the requested amount of time within the requested time period except within the specific time slot, wherein scheduling the remaining portion of the requested amount of time causes the availability of the resource for a remaining portion of the requested time period to be greater than zero percent and less than one hundred percent."

In contrast, the Miller reference is directed to scheduling tasks into available time slots for a resource. *See* Miller at 11:1-35. For example, the Miller reference discusses that, when scheduling a resource meets the requirements to perform a particular task, the particular task is concretely scheduled for the resource in the earliest available time slot for the resource. *See id.* at 21:65-22:34 (stating that "the assigned resource . . . is allocated to the task by deducting the time required by the effort requirement of the [task resource requirement] from the available time of the resource. The deduction is made by time units in chronological order from the availability calendar of the resource"). Nowhere does the Miller reference disclose or suggest scheduling a non-concrete request, let alone refining a non-concrete request, as provided in Applicants' independent claims.

Furthermore, the Examiner does not interpret Applicants' claim language correctly. The Examiner alleges that the Miller reference's discussion of a resource initially being indicated as "fully available" (e.g., if the resource is expected to work 40 hours/week, the resource is shown as being available for 40 hours/week) constitutes a "first scheduling request specifying that the resource is to be scheduled for a requested amount of time sometime within a requested time period, the requested amount of time being less than a maximum time amount that the resource is

usable during the requested time period,” as recited in Applicants’ independent claims. However, in contrast to Applicants’ claimed subject matter, the Miller reference provides that “[t]he resource availability data normally shows all resources as fully available, i.e., with no portion of the resources time allocated.” Miller at 20:32-33 (emphasis added). Instead of “specifying that the resource is to be scheduled for a requested amount of time sometime within a requested time period,” as recited in Applicants’ independent claims, this passage from the Miller reference specifies that a resource is fully available with no time scheduled. Furthermore, instead of providing “the requested amount of time being less than a maximum time amount that the resource is usable during the requested time period,” as recited in Applicants’ independent claims, the Miller reference provides that no time has been requested for a resource as indicated by the resource being fully available.

The other cited reference (the Virta reference) fails to cure the deficiencies of the Miller reference, and the Office Action does not suggest that it does. In particular, the Office concedes that the Virta reference does not disclose all of the recited elements of the independent claims. *See* Office Action at p. 2.

For at least the foregoing reasons, Applicants submit that the independent claims are patentable over the cited references. As such, Applicants respectfully request the rejections of independent claims 1 and 8 under 35 U.S.C. § 102, as well as the rejections of their dependent claims, be withdrawn.

Conclusion

Applicants submit that claims 1-2, 5-9, 11-13, and 15-21 are in condition for allowance, and request that the Examiner issue a notice of allowance.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue, or comment does not signify agreement with or concession of that rejection, issue, or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as

Applicant : Ehret et al.
Serial No. : 10/815,131
Filed : March 31, 2004
Page : 11 of 11

Attorney's Docket No.: 13906-018001/2004P00204 US

an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date:July 21, 2010 _____

/j richard soderberg reg. no. 43,352/ _____

J. Richard Soderberg
Reg. No. 43,352

Customer Number 32864
Fish & Richardson P.C.
Telephone: (612) 335-5070
Facsimile: (877) 769-7945

60637500.doc